

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 28, 2009

BILLY JACKSON COFFELT v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Davidson County
No. 83-F-1449 Cheryl Blackburn, Judge**

No. M2008-01038-CCA-R3-PC - Filed June 16, 2009

The petitioner, Billy Jackson Coffelt, appeals the Davidson County Criminal Court's denial of his petition for post-conviction relief from his conviction for armed robbery and resulting twenty-five-year sentence. He contends that post-conviction relief is warranted because the convictions used to enhance his sentence were later reversed. Based upon the record and the parties' briefs, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

David M. Hopkins, Nashville, Tennessee, for the appellant, Billy Jackson Coffelt.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that in 1983, the petitioner was convicted in case number D-1179 of assault with intent to commit first degree murder and assault with intent to commit robbery with a deadly weapon. See State v. Billy Jackson Coffelt, No. M2005-01723-CCA-DAC-CD, 2006 Tenn. Crim. App. LEXIS 619, at *1 (Nashville, Aug. 8, 2006). He received a life sentence for the assault with intent to commit first degree murder conviction and ten to twenty-one years for the assault with intent to commit robbery with a deadly weapon conviction. Id. In 1984, the petitioner was convicted in the present case, case number 83-F-1449, of robbery with a deadly weapon. According to the facts from this court's opinion in the petitioner's direct appeal, the petitioner and his codefendant accosted, robbed, and shot the victim after the victim tried to make a night deposit at a Nashville

bank. See State v. Billy Jackson Coffelt, No. 85-219-III, 1986 Tenn. Crim. App. LEXIS 2206, at *1 (Nashville, Feb. 4, 1986), perm. to appeal denied, (Tenn. Apr. 28, 1986). The trial court sentenced the petitioner as a Range I, standard offender to twenty-five years in confinement to be served consecutively to any prior sentences. See id. This court affirmed the petitioner's conviction. Id. at *2.

On August 8, 2006, a panel of this court concluded that the petitioner received the ineffective assistance of trial counsel in case number D-1179, vacated his two convictions, and ordered that he receive a new trial. Coffelt, No. M2005-01723-CCA-DAC-CD, 2006 Tenn. Crim. App. 619, at *55-56. The State decided not to retry the petitioner. On March 14, 2007, the petitioner filed a pro se petition for post-conviction relief in the present case, arguing that he is entitled to post-conviction relief because his sentence for robbery with a deadly weapon was enhanced based upon his convictions in case number D-1179. The post-conviction court appointed counsel, and counsel filed an amended petition.

At the evidentiary hearing, the petitioner testified that he was incarcerated in the Department of Correction. In 1985, the trial court sentenced him to twenty-five years for the armed robbery conviction, which the petitioner described as the "maximum sentence." The petitioner said that he already had been convicted in case number D-1179 of assault with intent to commit murder and attempted aggravated robbery and that the trial court had sentenced him to life and twenty-one years, respectively. However, the convictions were later overturned, and the case was dismissed. The petitioner then filed a petition for post-conviction relief in the instant case, asking the post-conviction court to reduce his twenty-five-year sentence and order that he serve the sentence concurrently with any prior sentences. The petitioner acknowledged that the State introduced his presentence report into evidence at his 1985 sentencing hearing but claimed the report was inaccurate regarding many of the listed convictions. Specifically, he said the report incorrectly showed he had a 1974 conviction for possession of contraband, a 1976 conviction for robbery, a 1976 conviction for burglary, and an armed robbery conviction in Sumner County. The petitioner explained that another individual with the name Billy J. Coffelt lived in Nashville and that "we've been confused before." He stated that "a lot of these convictions possibly belong to him, . . . not me." However, he acknowledged that the report correctly showed he had a 1977 robbery conviction in La Grange, Kentucky, and an armed robbery conviction in Sevier County. Regarding the latter conviction, the petitioner acknowledged that it resulted in his receiving a life sentence as a habitual criminal. The defense introduced the 1985 sentencing hearing transcript and the presentence report into evidence.

In a written order, the post-conviction court noted that although the petitioner claimed many of the convictions listed in his presentence report were not his, the petitioner failed to challenge those convictions at the 1985 sentencing hearing. The court determined that because the petitioner failed to challenge the convictions previously, he waived his right to argue the presentence report was inaccurate. The court stated that it had reviewed the 1985 sentencing hearing transcript and that "while it is clear that the Court relied on co-defendant's . . . past criminal history when sentencing him to thirty-two years, the court did not explicitly state on the record that it was considering Petitioner's past criminal history when sentencing him to his 25 year sentence." The post-conviction

court noted that in pronouncing the petitioner's sentence, the trial court discussed the seriousness of the facts in the case. The post-conviction court concluded that the petitioner failed to show that but for the convictions in case number D-1179, his sentence in the present case would have been different.

II. Analysis

The petitioner contends that he is entitled to post-conviction relief pursuant to Tennessee Code Annotated section 40-30-102(b)(3), which provides that a petitioner may seek post-conviction relief outside the statute of limitations period "from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid." The State argues that Tennessee Code Annotated section 40-30-102(b)(3) does not apply because the record does not indicate that the petitioner's sentence in the present case was enhanced based upon the convictions in case number D-1179. We conclude that the petitioner is not entitled to relief.

A petitioner may seek post-conviction relief "when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103. To be successful in a claim for post-conviction relief, the petitioner must prove all factual allegations contained in the post-conviction petition by clear and convincing evidence. See Tenn. Code Ann. § 40-30-110(f). "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." State v. Holder, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (quoting Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.2 (Tenn. 1992)). Issues regarding the credibility of witnesses, the weight and value to be accorded their testimony, and the factual questions raised by the evidence adduced at trial are to be resolved by the post-conviction court as the trier of fact. See Henley v. State, 960 S.W.2d 572, 579 (Tenn. 1997). Therefore, we afford the post-conviction court's findings of fact the weight of a jury verdict, with such findings being conclusive on appeal absent a showing that the evidence in the record preponderates against those findings. Id. at 578.

At the time the petitioner committed the offense, robbery accomplished with a deadly weapon was a Class X felony and carried a punishment of ten years to life. Tenn. Code Ann. § 39-2-501(a), (b) (1982) (repealed 1989). A life sentence was presumed to be sixty years. Tenn. Code Ann. § 40-35-109(d)(1) (1982) (repealed 1989). Therefore, as a Range I, standard offender, the petitioner's range of punishment was ten to thirty-five years. See Tenn. Code Ann. § 40-35-109(a) (1982) (repealed 1989) (providing that a Range I sentence "shall be not less than the minimum sentence established by law, and not more than the minimum sentence plus one-half (1/2) of the difference between the maximum sentence and the minimum sentence").

The petitioner contends that he is entitled to relief pursuant to Tennessee Code Annotated section 40-30-102(b). However, Tennessee Code Annotated section 40-30-102(b) provides specific, limited exceptions which allow consideration of a petition filed outside the one-year statute

limitations period. Subsection (b)(3), upon which the petitioner relies, generally provides that an untimely petition may be considered where the petition seeks relief from a sentence that was enhanced because of a previous conviction and the previous conviction has subsequently been held to be invalid.

The post-conviction court concluded that the trial court sentenced the petitioner based upon the circumstances of the offense, not the petitioner's prior convictions. Our review of the sentencing hearing transcript supports the court's conclusion. At the sentencing hearing, no witnesses testified. The State submitted into evidence the petitioner's presentence report and certified copies of his convictions. The trial court characterized the crime as a "very elaborate scheme" and stated as follows:

I do recall it. It was a very serious -- a very severe type of offense. It took planning. It involved the kidnapping of a . . . well, kidnapping in a sense of a security guard, taking his clothes, posing as the guard, and all in accordance to this preconceived plan. It's a very serious offense, a very, very severe offense, an offense which could have resulted in loss of life and for all intents and purposes would have resulted in loss of life had not the victim been able to alert someone to call emergency aid.

The trial court then sentenced the petitioner, without further explanation, to twenty-five years in confinement. As the post-conviction court correctly concluded, nothing indicates the trial court relied on the petitioner's prior convictions to enhance his sentence above the ten-year minimum.

In any event, the presentence report introduced into evidence at the sentencing hearing shows the petitioner began committing crimes in 1972 when he was eighteen years old. In addition to the two convictions that were later reversed in case number D-1179, the report shows the petitioner has numerous convictions for armed robbery, robbery, burglary, and possession of a controlled substance. He also was declared a habitual criminal, which resulted in a life sentence. The report shows he served time in confinement for those convictions and was paroled at least twice. The preparer of the report wrote as follows:

Subject has a lengthy arrest record. He has been convicted of at least eleven (11) felonies in the past twelve (12) years and has spent the majority of that time incarcerated. He has been on probation once and paroled (3) times. In 1983 he was convicted of being a Habitual Criminal and sentenced to Life. This prior record indicates he has been involved in crimes of continually increasing violence.

As the post-conviction court correctly noted, the petitioner's failure to challenge the presentence report previously waives any objection to its accuracy. See Tenn. R. Evid. 103(a)(1); Tenn. R. App.

P. 36(a). Therefore, even if the trial court relied on the petitioner's convictions in case number D-1179 to enhance his sentence in the present case, given his extensive criminal history, the petitioner has failed to show his sentence would have been different. Therefore, he is not entitled to relief.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgment of the post-conviction court.

NORMA McGEE OGLE, JUDGE